

already before it, the Commission should expeditiously complete the long-pending *LEC Non-dominant Proceeding* and find that all BOCs are non-dominant in the provision of all interstate, interexchange services, including international services.

The facts Qwest supplies in support of its Petition provide more evidence to demonstrate what is now patently obvious – competition is rampant throughout all long distance markets. Dominant carrier regulatory requirements related to such services were adopted in a different age to govern the conduct of standalone long distance carriers that operated in a wireline/narrowband environment, and they address concerns that are no longer valid. Indeed, the Commission itself has recently found that, especially for mass market consumers, “[t]here is significant evidence that long distance service purchased on a stand-alone basis is becoming a *fringe* market.”³ That is principally due to the rapid development of new technologies that have arisen to challenge – and often displace – traditional telecommunications services. Competition from those new technologies constrains any carrier’s ability to exercise market power in the provision of interexchange services.⁴ These fundamental changes – all of which are evident from reading daily news reports and watching advertisements on television – demonstrate that the entire telecommunications marketplace is experiencing rapid and fundamental change that has rendered old regulatory paradigms obsolete.

³ *SBC Communications, Inc and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005) (“*SBC-AT&T Merger Order*”), ¶91 (emphasis added).

⁴ The Commission’s Rules define a “dominant carrier” as “a carrier found . . . to have market power (*i.e.*, power to control prices).” 47 U.S.C. §61.3q. The Commission in turn has defined market power as a carrier’s ability unilaterally to raise and sustain price above a competitive level by restricting output. *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149 and 96-61, Report and Order, 12 FCC Rcd 15756 (1997) (“*LEC Classification Order*”), ¶¶6, 11.

Wireline and wireless networks have quickly grown faster and more robust, and they provide consumers with vastly greater bandwidth than was possible even a few years ago. The growth of national wireless networks and the development of new wireless technologies have also provided consumers with an ever-increasing array of alternatives for voice and data services. Widespread adoption of broadband connections to the Internet have led to the development of commercially viable VoIP services, and cable companies and others are rapidly exploiting this technology to compete aggressively not only for standalone voice services but also for bundled packages that include video and high-speed Internet access services.

Critically, the same marketplace effects described by Qwest are also occurring in AT&T's in-region territories. AT&T, as all other BOCs, is struggling to retain access and long distance lines in the face of growingly intense intermodal competition, much of which does not even use ILEC local network facilities. According to a recent article in *Business Week Online*, a Standard & Poor's Equity Research Report shows that between June 2004 (when legacy AT&T Corp. decided to exit the mass market) and June 2005, the BOCs lost 4.5% to 5.5% of their access lines to cable, wireless, and to a lesser extent, wholesale local service providers.⁵ That same article notes that the BOCs have attempted to stem these losses through the use of bundled offerings, but the losses still continue, even as operating margins are squeezed through price reductions. The article further predicts that these losses will continue in the future and that, "as the local phone biz fizzles . . . some carriers will spin off their local phone business."⁶ Thus, it is

⁵ See Todd Rosenbluth, TECH KNOWLEDGE, *Business Week Online*, October 17, 2005.

⁶ Although this article focuses on local phone lines, it is equally apt to consumer long distance services, because consumers who substitute VoIP or wireless service for their landline connection will obviously not be obtaining long distance service from their BOC. See *SBC-AT&T Merger Order*, ¶ 91 (recognizing "the declining proportion of consumers choosing a long distance provider different from their local service provider").

evident that no BOC has – or could attain – market power in the provision of long distance services, because the changes that have fundamentally transformed the telecommunications industry are technologically driven and cannot be reversed by the actions of any single carrier. Indeed, the Petition (at 12) is clearly correct that *any* BOC effort to reduce output of long distance services “in an attempt to increase profits would be nonsensical.”

Similarly, there is no doubt that all BOCs lack market power and are thus non-dominant in the provision of long distance service to business customers. In the ten years since the Commission declared the legacy AT&T non-dominant in the provision of long distance services to enterprise customers,⁷ it has repeatedly held that business customers have numerous choices among suppliers of those services.⁸ And just recently, the Commission concluded that competition for “high-capacity transmission services,” including Frame Relay, ATM, and Gigabit Ethernet is frequently “provided via emerging technologies,” that “myriad providers are prepared to make competitive offers” for enterprise long distance business, and that “these multiple competitors ensure that there is sufficient competition.”⁹ Competitive suppliers to

⁷ *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, CC Docket No. 90-132, 11 FCC Rcd 3271 (1995) (“*AT&T Non-Dominance Order*”).

⁸ *See, e.g., MCI-WorldCom Merger Order*, 13 FCC Rcd 18025, ¶¶ 34, 40-42, 65; 73 & n.230 (1998); *see also Bell Atlantic-GTE Merger Order*, 15 FCC Rcd 14032, ¶¶ 120-21 (2000); *SBC-Ameritech Merger Order*, 14 FCC Rcd 14712, ¶¶ 89-90 (1999).

⁹ *SBC-AT&T Merger Order*, ¶¶ 57, 73, 74; *see also Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005), ¶ 74 (“*Verizon-MCI Merger Order*”). The Commission has also found that the market for wholesale long distance services is characterized by “significant spare capacity,” which is the hallmark of a competitive market, and that the market is facing “migration of minutes to packet-switched voice services, Internet-based applications, and other technological substitutes,” which are diverting traffic away from traditional wireline carriers. *SBC-AT&T Merger Order*, ¶ 150.

business customers include not only traditional IXC, LECs and CLECs, but also foreign-based carriers, cable providers, system integrators, equipment vendors and value-added resellers. All of these factors combine to support the Commission's conclusion that "competition in the enterprise market is robust."¹⁰

But despite all of this intense competition, the Petition (at 5-6) correctly notes that virtually all of the BOCs' rivals have the flexibility to choose the corporate structure that enables them to compete most effectively, free from the additional costs and competition-dampening effects of dominant carrier regulation.¹¹ And Qwest is also correct that there is no basis to single out one set of competitors that should be subjected to such treatment, which only reduces competition and harms consumers. However, there is no need to deal with these critical and global competition issues in the context of a new forbearance petition filed by a single carrier when the Commission already has an open rulemaking in which these issues have been teed up for years. And there is no basis to treat AT&T differently from any other BOC.

Qwest's desire for an expeditious resolution of these issues is certainly understandable, but it is no less urgent for AT&T than for Qwest, because AT&T's Section 272 obligations are expected to expire even earlier than Qwest's. And the post-merger AT&T has the same need for regulatory certainty as Qwest or any other BOC. It too "cannot move forward with any certainty on any post-sunset planning concerning the provision of in-region-IXC services because it remains trapped in a regulatory quandary by the Commission's continued presumption of

¹⁰ *Id.*, n.223.

¹¹ See *LEC Classification Order*, ¶ 88 ("[t]he Commission has long recognized that the regulations associated with dominant carrier classification can dampen competition"). See also Petition at 15; *AT&T Non-Dominance Order*, ¶ 27.

dominance” for non-272 affiliates.¹² Thus, there is no reason – and no rational basis – for the Commission to decide these issues piecemeal when they are already before the Commission in a pending proceeding.

In sum, there is no logical or regulatory principle that supports the imposition of costly and cumbersome dominant carrier obligations on any BOC’s long distance services. And the most efficient way for the Commission to address these issues is promptly to adopt general rules in the pending *LEC Non-dominant Proceeding* that place all BOCs on equal footing with their intermodal and intramodal competitors for all long distance services.¹³

Respectfully submitted,

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¹² Petition at 5.

¹³ To the extent the Commission feels compelled to take any action with regard to the Petition, it should decide the issues raised in the *LEC Non-dominance Proceeding* well in advance of the statutory dates required by Section 10 and then, if necessary, dismiss the Petition as moot.